

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 877 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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PATEL DIVABEN GANDABHAI
WD/O GANDABHAI JIVABHAI PATEL AND OTHERS
Versus
RAVAL GODAVARIBEN MANILAL
WD/O.MANILAL MAGANLAL AND OTHERS

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Appearance :

Mr Ravindra Shah for the applicants
Mr RC JANI for Opponent No.1
None for Opponent Nos.1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MR JAYESH M PATEL for Opponent Nos. 2 - 15.

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CORAM : HONOURABLE MR.JUSTICE
P.B.MAJMUDAR
Date : 20/03/2006

ORAL JUDGMENT

By filing this revision under Section 115 of the Civil Procedure Code the petitioners - original defendants have challenged order dated 8th July 1988 passed by the learned Civil Judge (Junior Division) at Vijapur below Exhibit 60 in Regular Civil Suit No.175 of 1983. The aforesaid suit is filed by the respondent for redemption of mortgage as well as for possession of the disputed land. In the said suit the petitioners gave an application that the issue of tenancy may be referred to the competent court under the Bombay Tenancy and Agricultural Lands Act. The learned trial Judge rejected the said prayer by holding that the tenancy rights of the petitioners - original defendants are already decided and concluded by the order of the Mamlatdar by his order dated 18.4.1983 and that now the said question cannot be re-opened as it is barred by the principles of res-judicata.

This revision application filed under Section 115 of the Civil Procedure Code is not maintainable by virtue of amendment of Section 115 of the Civil Procedure Code as the order in question is not revisable. Realising this difficulty, Mr Shah, after taking instructions from one of the petitioners, who is present before the Court states that the petitioners are not pressing this petition at this stage with a liberty to raise the aforesaid point before the Appellate Court in case the decree of the trial Court is challenged before the Appellate Court. Permission as prayed for is granted to the petitioners subject to the aforesaid liberty given to the petitioners to raise this point before the Appellate Court in case the decree of the trial Court

is challenged before the Appellate Court. It is needless to say that at the time of deciding the suit, the Court shall consider the evidence on record and decide all the points, which are required to be decided in the suit.

In view of the aforesaid observations and directions, the revision application stands disposed of as not pressed. Rule is discharged with no order as to costs. Writ to be sent to the trial Court forthwith. Record and proceedings be sent back to the trial court forthwith.

(P.B.Majmudar, J.)

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